



## **Law Enforcement and Prosecutors Can Inadvertently Violate the Trafficking Victims Protection Act (TVPA) and Pennsylvania Law When Engaging in a Coercive Parallel Process to Traffickers**

### **I. Purpose of the Trafficking Victims Protection Act**

The Trafficking Victims Protection Act (TVPA) is a United States federal statute designed to “combat trafficking of persons, especially into the sex trade, slavery, and slavery-like conditions, in the United States and countries around the world through prevention, through prosecution and enforcement against traffickers, and through protection and assistance to victims of trafficking...”<sup>1</sup> Enacted in 2000 and reauthorized in 2003, 2005, 2008, and 2013, the TVPA aims to reduce trafficking in persons, target and punish perpetrators of trafficking, and protect victims, particularly women and children.<sup>2</sup> To achieve these aims, the Trafficking Victims Protection Reauthorization Act of 2013 states:

It is the sense of the Congress that—(3) States should—(A) treat minor victims of sex trafficking as crime victims rather than as criminal defendants or juvenile delinquents; (B) adopt laws that—(i) establish the presumption that a child under the age of 18 who is charged with a prostitution offense is a minor victim of sex trafficking; (ii) avoid the criminal charge of prostitution for such a child, and instead consider such a child a victim of crime and provide the child with appropriate services and treatment; and (iii) strengthen criminal provisions prohibiting the purchasing of commercial sex acts, especially with minors . . . .<sup>3</sup>

Therefore, it is clear Congress intended the TVPA and its subsequent reauthorizations preclude the arrest of victims of human trafficking, especially minors, for prostitution and related charges, and instead, treat them appropriately as victims—not perpetrators—of a serious and violent crime.

### **II. Inadvertent Engagement in Coercive Parallel Process by Law Enforcement and Prosecutors**

<sup>1</sup> H.R. Conf. Rep. 106-139 (2000).

<https://www.congress.gov/congressional-report/106th-congress/house-report/939/1>

<sup>2</sup> *Id.* (stating, “The purpose of the TVPA is to “combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominately women and children, to ensure just and effective punishment of traffickers, and to protect their victims.”).

<https://www.congress.gov/congressional-report/106th-congress/house-report/939/1>

<sup>3</sup> H.R. 898, 113th Cong. § 221 (2013)

<https://www.congress.gov/congressional-report/106th-congress/house-report/939/1>

Traffickers often force their victims into servitude through coercion, which manifests in different forms. The TVPA explicitly defines coercion to include “the abuse or threatened abuse of the legal process.”<sup>4</sup> The statute further defines abuse or threatened abuse of the law or legal process, “whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, . . . to exert pressure on another person to cause that person to take some action or refrain from taking some action”<sup>5</sup> as a form of coercion for trafficking purposes. Courts have also recognized threats of deportation and threats of involving the Federal Bureau of Investigation (FBI) as abuse of the legal process.<sup>6</sup> In addition to the federal law, Pennsylvania’s comprehensive human trafficking statute, Act 105, tracks the language of the TVPA and prohibits “subject[ing] an individual to involuntary servitude through . . . [a]bus[ing] or threaten[ing] to abuse the legal process.”<sup>7</sup>

This form of coercion can inadvertently occur within some human trafficking prosecutions between the prosecutor or law enforcement officer and the victim. Parallel process occurs when “two systems – whether these consist of individuals, groups or organizations – [who] have significant relationships with one another,” cause individuals within those systems to “develop similar affects, cognition, and behaviors” in both systems.<sup>8</sup> In the context of human trafficking prosecutions, the two involved systems are the criminal justice system and the trafficker’s “system” of fear and manipulation. Accordingly, prosecutors and law enforcement must be aware of how their conduct may inadvertently parallel that of traffickers.

For example, when investigatory personnel threaten human trafficking victims with criminal charges or immigration consequences to compel their participation and cooperation in an investigation, they employ the same coercive technique that many traffickers use.<sup>9</sup> In these instances, prosecutors and law enforcement agents act in a manner comparable to traffickers in the eyes of the victims they intend to protect and assist. They are also engaging in the exact type of coercion that the TVPA, as well as Act 105 in Pennsylvania, is intended to prevent.<sup>10</sup>

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<sup>4</sup> 22 U.S.C. § 7102(3)(c).

<https://www.law.cornell.edu/uscode/text/22/7102>

<sup>5</sup> § 7102(1).

<https://www.law.cornell.edu/uscode/text/22/7102>

<sup>6</sup> See e.g., *U.S. v. Dann*, 652 F.3d 1160, 1172 (9th Cir. 2011); *Elat v. Ngoubene*, 993 F. Supp. 2d 497, 523-24 (D. Md. 2014); *Kiwanuka v. Bakilana*, 844 F. Supp. 2d 107, 115 (D.D.C. 2012).

<sup>7</sup> 18 Pa.C.S. § 3012(b)(4) (2016) (“(b) Means of subjecting an individual to involuntary servitude. -- A person may subject an individual to involuntary servitude through any of the following means: . . . (4) Abusing or threatening to abuse the legal process.”).

<http://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=18&div=0&chpt=30>

<sup>8</sup> Sandra L. Bloom, *Parallel Process*, (Dec. 22, 2016, 5:21 PM)

<http://www.sanctuaryweb.com/Portals/0/2010%20PDFs%20NEW/2010%20Bloom%20Parallel%20Process.pdf>

<sup>9</sup> 18 U.S.C. § 1589(c)(1), (2016) (defining “abuse or threatened abuse of the legal process” as “the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.”).

<https://www.law.cornell.edu/uscode/text/18/1589>

<sup>10</sup> 18 Pa.C.S. § 3012(b)(4) (“(b) Means of subjecting an individual to involuntary servitude. -- A person may subject an individual to involuntary servitude through any of the following means: . . . (4) Abusing or threatening to abuse the legal process.”).

<http://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=18&div=0&chpt=30>

### III. Law Enforcement and Prosecutorial Best Practices

In order to avoid engaging in a coercive parallel process to that of traffickers, prosecutors and law enforcement personnel must engage in victim-centered investigations of human trafficking crimes.<sup>11</sup> Such investigations “respect . . . the dignity of the victim and adapt . . . wherever possible, to meet the needs and wishes of the victim.” Law enforcement officials must build trust “by showing patience and a non-judgmental attitude” when working with victims to investigate human trafficking cases.<sup>12</sup> Abuse or threatened abuse of the legal process by law enforcement only serves to alienate victims of human trafficking, and creates an additional barrier to bringing them justice.

To improve the outcomes of human trafficking cases while simultaneously avoiding abuse or threatened abuse of the legal process, prosecutors can employ specific techniques and strategies.<sup>13</sup> These strategies can be divided into three categories, each with a different focus: the first set of strategies applies to engaging with victims, the second applies to the pretrial and pleadings stage of the trial process, and the third category applies to the trial itself.

The first category, dealing with victim engagement strategies, includes using a trauma-informed approach and “victim-sensitive and trafficking-specific language.”<sup>14</sup> For example, prosecutors and law enforcement officers should consider how trauma affects victims’ reactions to authority figures and the criminal justice system and accommodate the victims to the extent possible.<sup>15</sup>

The second category, which applies to pretrial preparation, includes “engaging in open charge selection,”<sup>16</sup> “ensuring proper defendant and informant sequencing,”<sup>17</sup> and “engaging in

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<sup>11</sup> Office of Justice Programs Office for Victims of Crime, Human Trafficking Task Force e-Guide, Victim-Centered Investigations, (Dec. 22, 2016, 5:21 PM),

<https://www.ovcttac.gov/taskforceguide/eguide/5-building-strong-cases/51-victim-centered-investigations/>

<sup>12</sup> International Association of Chiefs of Police, The Crime of Human Trafficking: A Law Enforcement Guide to Identification and Investigation, (Dec. 22, 2016, 5:21 PM),

<http://www.theiacp.org/portals/0/pdfs/CompleteHTGuide.pdf>

<sup>13</sup> Office of Justice Programs Office for Victims of Crime, Human Trafficking Task Force e-Guide, Resources: 5.5 Strategies for Prosecutors and Law Enforcement, (Dec. 22, 2016, 5:21 PM),

<https://www.ovcttac.gov/taskforceguide/eguide/5-building-strong-cases/resources-55-strategies-for-prosecutors-and-law-enforcement/>

<sup>14</sup> Office of Justice Programs Office for Victims of Crime, Human Trafficking Task Force e-Guide, Victim Interview & Preparation, (Dec. 22, 2016, 5:21 PM),

<https://www.ovcttac.gov/taskforceguide/eguide/5-building-strong-cases/53-victim-interview-preparation/>

<sup>15</sup> Office of Justice Programs Office for Victims of Crime, Human Trafficking Task Force e-Guide, Resources: 5.1 Victim-Centered Investigations, (Feb. 17, 2017, 5:18 PM),

<https://www.ovcttac.gov/taskforceguide/eguide/5-building-strong-cases/51-victim-centered-investigations/>

<sup>16</sup> Office of Justice Programs Office for Victims of Crime, Human Trafficking Task Force e-Guide, Engaging in Open Charge Selection,

<https://www.ovcttac.gov/taskforceguide/eguide/5-building-strong-cases/55-strategies-for-prosecutors-law-enforcement/engage-in-open-charge-selection/>

(“The prosecutor should engage in open charge selection and not limit the matter to human trafficking-related offenses alone.”).

<sup>17</sup> Office of Justice Programs Office for Victims of Crime, Human Trafficking Task Force e-Guide, Ensure Proper Defendant & Informant Sequencing, (Feb. 17, 2017, 5:33 PM),

motion practice.”<sup>18</sup> Prosecutors who implement these strategies will build their cases by, respectively, broadening the scope of the prosecution through the inclusion of non-trafficking-related charges, obtaining and confirming key witnesses, and filing appropriate motions to enhance their cases-in-chief.

Finally, the trial strategies include: “adapting structural presentation and using three-dimensional corroboration,”<sup>19</sup> and “presenting trafficking experts.”<sup>20</sup> These strategies alter the presentation of witnesses at trial in order to provide the fact-finder with the strongest foundation of knowledge possible. Specifically, expert witnesses called to testify about the effects of trauma on trafficking victims can help jurors to contextualize, understand, and empathize with the victim’s actions, even when she may appear unsympathetic or apparently lacks credibility. Experts who testify as to techniques used by traffickers also increase jurors’ ability to visualize the trauma that victims of trafficking endure. By implementing these strategies throughout the trial process rather than threatening the abuse of the legal process, prosecutors can enhance their chances of success.

#### **IV. Conclusion**

To bring about ethical, successful prosecutions and to ensure compliance with the TVPA and Pennsylvania law, law enforcement and prosecutors must take extreme care to avoid engaging in a coercive parallel process to traffickers when working with victims and survivors of human trafficking.

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<https://www.ovcttac.gov/taskforceguide/eguide/5-building-strong-cases/55-strategies-for-prosecutors-law-enforcement/ensure-proper-defendant-informant-sequencing/>

(discussing fact-specific analysis for determining which offenders can be “flipped” into testifying for prosecution).

<sup>18</sup> Office of Justice Programs Office for Victims of Crime, Human Trafficking Task Force e-Guide, Engage in Human Trafficking Motion Practice, (Feb. 17, 2017, 5:35 PM),

<https://www.ovcttac.gov/taskforceguide/eguide/5-building-strong-cases/55-strategies-for-prosecutors-law-enforcement/engage-in-human-trafficking-motion-practice>

(discussing methods of proactively filing motions to gain better understanding of defendant’s case strategy).

<sup>19</sup> Office of Justice Programs Office for Victims of Crime, Human Trafficking Task Force e-Guide, Adapt the Structural Presentation and Use Three-Dimensional Corroboration, (February 3, 2017, 11:33 AM),

<https://www.ovcttac.gov/taskforceguide/eguide/5-building-strong-cases/55-strategies-for-prosecutors-law-enforcement/adapt-the-structural-presentation-and-use-three-dimensional-corroboration/>

(discussing prosecutorial tactic of calling witnesses to testify in a “thematic” or “incident-specific” manner, rather than in a “chronological” or “witness-specific” manner to increase jurors’ recall and understanding of chain of events).

<sup>20</sup> Office of Justice Programs Office for Victims of Crime, Human Trafficking Task Force e-Guide, Presenting Human Trafficking Experts, (Feb. 17, 2017, 5:38 PM),

<https://www.ovcttac.gov/taskforceguide/eguide/5-building-strong-cases/55-strategies-for-prosecutors-law-enforcement/present-human-trafficking-experts/>